

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 HAWAIIAN ELECTRIC COMPANY, INC.)
)
 For Approval of Recovery of Big)
 Wind Implementation Studies Costs)
 Through the Renewable Energy)
 Infrastructure Program Surcharge.)

DOCKET NO. 2009-0162

ORDER DENYING MOTIONS TO INTERVENE AND PARTICIPATE

2009 SEP -3 A 9: 25

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2009 SEP -2 A 10:49

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_____)	

ORDER DENYING MOTIONS TO INTERVENE AND PARTICIPATE

By this Order, the commission denies: (1) the Motion to Intervene filed by Life of the Land ("LOL") on July 29, 2009 ("LOL's Motion"), (2) the Motion to Participate filed by Hawaii Holdings, LLC, dba First Wind Hawaii ("First Wind") on August 4, 2009 ("First Wind's Motion"), and (3) the Motion to Participate filed by Castle & Cooke Resorts, LLC ("Castle & Cooke") on August 6, 2009 ("Castle & Cooke's Motion").

I.

Background

On July 17, 2009, HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") filed an application for commission approval to defer the costs of outside services that are expected to be incurred from January 1, 2009 through 2010 in connection with various studies examining: (1) the integration and transmission of wind generated energy potential located on Molokai and Lanai (the "Big Wind Projects") to HECO's power grid on Oahu, and

(2) potential routes and permitting requirements for the Oahu transmission lines and facilities necessary to interconnect the undersea cables that would deliver power from the Big Wind Projects to Oahu.¹ HECO also requests permission to recover the cost of these "Big Wind Implementation Studies" through either the Renewable Energy Infrastructure Program/Clean Energy Infrastructure Surcharge in Docket No. 2007-0416, which is currently pending before the commission, or in the alternative, through a specific surcharge mechanism that would be approved in this proceeding.

LOL timely filed its Motion to Intervene on July 29, 2009. First Wind timely filed its Motion to Participate on August 4, 2009. Castle & Cooke timely filed its Motion to Participate on August 6, 2009. HECO filed a Memorandum in Opposition to LOL's Motion on August 5, 2009 ("HECO's Memorandum in Opposition"). HECO did not file a response to First Wind's Motion or Castle & Cooke's Motion.

¹Application; Exhibits 1-4; Verification; and Certificate of Service ("Application"). HECO served copies of its Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), which is an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62.

II.

Discussion

A.

Intervention and Participation

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;

- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."²

HAR § 6-61-56 sets forth the requirements for participation without intervention in commission proceedings. Similar to the requirements for intervention in HAR § 6-61-55, HAR § 6-61-56 provides in relevant part:

- (b) A person who has a limited interest in a proceeding may make an application to participate without intervention by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57.
- (c) The motion shall provide:
 - (1) A clear and concise statement of the direct and substantial interest of the applicant;
 - (2) The applicant's position regarding the matter in controversy;
 - (3) The extent to which the participation will not broaden the issues or delay the proceeding;

²See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and
- (7) A statement of the relief desired.

HAR § 6-61-56(b) and (c). Moreover, regarding the extent to which a participant may be involved in a proceeding, HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

HAR § 6-61-56(a).

B.

LOL's Motion

In its motion, LOL states that it is "a 39-year old non-profit organization" whose "members live, work, and recreate in Hawaii."³ LOL states that it "is concerned with many issues

³See LOL's Motion, at 5.

including . . . those related to the environment, climate, justice, equity, and life cycle impacts."⁴

Regarding HECO's Application, LOL claims that "as a result of [the Big Wind Projects'] cost and the size of the renewable systems being planned, it will displace other alternatives that might achieve the same thing, with different technologies, different costs, and with different winners and losers."⁵ LOL further states that "[t]here are many alternative routes that can get us to energy independence."⁶ Having sponsored "dozens of expert witnesses in other dockets in support of an alternative energy proposal, based on distributed generation, feed-in tariffs, wheeling, wave energy systems, ocean thermal energy conversion, sea water air conditioning, wind, solar thermal, solar electric and energy efficiency[]",⁷ LOL claims that it will present "a proactive case, supported by expert witnesses and exhibits, which will provide to the Commission alternate scenarios."⁸

Upon review, the commission finds that LOL's Motion fails to sufficiently satisfy the requirements of HAR § 6-61-55(b). The specific issue in this proceeding is whether or not HECO should be allowed to defer the costs for

⁴Id.

⁵Id. at 2.

⁶Id. at 6.

⁷Id. at 5-6.

⁸Id. at 7.

outside services incurred in 2009 and 2010 in connection with the Big Wind Implementation Studies and recover such costs through a surcharge. As HECO notes in its Memorandum in Opposition to LOL's Motion, it is "not seeking approval in this docket to proceed with the Big Wind Projects. Nor is the Company seeking approval in this docket of any power purchase agreements ("PPAs") with respect to the Big Wind Projects."⁹ Rather, such matters "will be addressed in future applications".¹⁰

Because this proceeding is limited to the determination of the recovery of costs for the Big Wind Implementation Studies, LOL's request for an opportunity to "provide meaningful input on whether the [Big Wind] project makes sense or not[]" is premature and not specifically relevant to the resolution of this Application. Based on these reasons, the commission concludes that LOL's participation as an intervenor would unreasonably broaden the specific issues presented in this proceeding.

Moreover, LOL has not demonstrated that it has any specialized expertise or information that would be pertinent to the commission's determination of the issues in this docket. LOL does not indicate what expertise or information that it is able to provide regarding the recoverability of the Big Wind Implementation Studies costs or the reasonableness of the costs

⁹See HECO's Memo in Opposition, at 5.

¹⁰Id. See also Application, at 23.

themselves.¹¹ Accordingly, the commission concludes that LOL's participation in this docket is unlikely to assist the commission in the development of a sound and complete record, and that LOL's Motion should be denied.

C.

First Wind's Motion

In its motion, First Wind states that as the developer of First Wind's Molokai Project (one of the two Big Wind Projects under consideration), "First Wind has a direct and substantial interest in the issues involved in this proceeding, since the Big Wind Implementation Studies will have a direct and critical impact upon the development of First Wind's Molokai Project, . . ."¹² Due to "substantial financial and operational commitments that First Wind has made to design, develop and operate its Molokai Project," First Wind claims that "the issue of how, and to what extent, the costs of the Big Wind Implementation Studies . . . to be incurred by HECO will be treated are of particular and vital interest to First Wind for its Molokai Project."¹³

¹¹The commission further notes that LOL fails to describe how its interests are distinct from those represented by the Consumer Advocate, with respect to the cost recovery issue. As specifically stated in HRS § 269-51, the Consumer Advocate is statutorily required to "represent, protect, and advance the interests of all consumers, including small businesses, of utility services."

¹²See First Wind's Motion, at 4.

¹³Id.

Upon review, the commission finds that First Wind's Motion fails to sufficiently satisfy the requirements of HAR § 6-61-56(c). Although First Wind may have a financial interest in the Big Wind Projects as a potential vendor of wind generated energy, First Wind has not demonstrated that it has a direct and substantial interest in the issue presented in this proceeding -i.e., the issue of whether HECO may seek cost recovery of the Big Wind Implementation Studies and the specific mechanism by which such costs can be recovered.

First Wind's primary interest appears to relate more to the information that will be provided through the Big Wind Implementation Studies. In its Motion, First Wind states that the "Big Wind Implementation Studies will provide key information regarding the interconnection requirements and basic design information for the interconnection requirements. . . , and that such studies are essential for First Wind's Molokai Project."¹⁴ Such interests relate to the actual design and development of the Big Wind Project, rather than HECO's recovery of the outside services costs of studies examining the feasibility of the Big Wind Project and how it may be implemented.¹⁵ In this regard,

¹⁴See First Wind's Motion, at 5.

¹⁵The commission further notes that such information would not necessarily be made available to First Wind, even if First Wind's motion were granted. According to HECO, "many aspects of the studies involve sensitive, confidential and/or proprietary information As a result, the distribution of such information should be monitored and subject to non-disclosure agreements and/or protective orders." See HECO's Memorandum in Opposition to LOL's Motion, at 7, n.5. First Wind would arguably not be entitled to such information, unless HECO agreed to

First Wind's concerns regarding the development of wind energy projects on Molokai is premature and not reasonably pertinent to the resolution of this Application. Based on these reasons, the commission concludes that First Wind's participation would unreasonably broaden the specific issues presented in this proceeding.

Moreover, First Wind has not demonstrated that it has any specialized expertise or information that would be pertinent to the commission's determination of the issues in this docket. First Wind does not indicate what expertise or information that it is able to provide regarding the recoverability of the Big Wind Implementation Studies costs or the reasonableness of the costs themselves. Accordingly, the commission concludes that First Wind's participation in this docket is unlikely to aid the commission and that First Wind's Motion should be denied.

D.

Castle & Cooke's Motion

In its motion, Castle & Cooke states that "[a]s a renewable energy developer, and developer of the Lanai Wind Farm, Castle & Cooke has a direct and substantial interest in the issues to be addressed in this proceeding."¹⁶ Castle & Cooke further states that it has "substantial expertise and intimate

disclose the information. Therefore, First Wind's interest in participating in this proceeding would not be served.

¹⁶See Castle & Cooke's Motion, at 3.

knowledge and experience with respect to all aspects of wind energy generation on Lanai as well as transmission of that energy to Oahu via an undersea cable system."¹⁷

Upon review, the commission finds that Castle & Cooke's Motion fails to sufficiently satisfy the requirements of HAR § 6-61-56(c). Castle & Cooke has not demonstrated that it has a direct and substantial interest in the cost recovery issues presented in this proceeding. Similar to First Wind, Castle & Cooke's concerns regarding the development of wind energy projects on Lanai is premature and not reasonably pertinent to the resolution of this Application. Based on these reasons, the commission concludes that Castle & Cooke's participation would unreasonably broaden the specific issues presented in this proceeding.

Moreover, Castle & Cooke has not demonstrated that it has any specialized expertise or information that would be pertinent to the commission's determination of the issues in this docket. Although Castle & Cooke claims that it "can aid the Commission by submitting an affirmative case for Castle & Cooke's positions[]", it does not state what expertise or information that it is able to provide regarding the recoverability of the Big Wind Implementation Studies costs or the reasonableness of the costs themselves. Accordingly, the commission concludes that Castle & Cooke's participation in this docket is unlikely to aid the commission and that Castle & Cooke's Motion should be denied.

¹⁷Id. at 4-5.

III.


Orders

THE COMMISSION ORDERS:

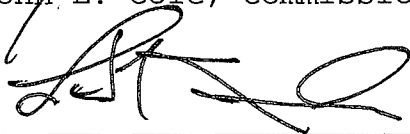
1. LOL's Motion is denied.
2. First Wind's Motion is denied.
3. Castle & Cooke's Motion is denied.

DONE at Honolulu, Hawaii SEP - 2 2009.

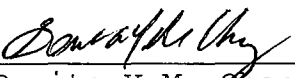
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Bonita Y.M. Zhang
Commission Counsel

2009-0162.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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Certificate of Service
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